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CLEARINGHOUSE RULE 95-129

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

1. Statutory Authority

Although s. 601.645, Stats., authorizes the Office of Commissioner of Insurance to refuse to disclose testimony reports, records and information that are obtained, produced or created in the course of an inquiry under s. 601.42, it does not contain authority to say that those records “shall not be subject to subpoena.” Even though there is authority to grant confidential status to reports based on s. 601.465, Stats., it is suggested that, since the public policy of the state is to allow access to records unless there is a reason not to grant such access, the commissioner should explain why all reports obtained by or disclosed to the commissioner under the new rule must be given this confidential treatment.

2. Form, Style and Placement in Administrative Code

a. The statement of statutory authority and of statutes interpreted lists “s. 623.23, Stats.,” which does not currently exist. What is the correct citation?

b. In both the citations of statutory authority and statutes interpreted, s. 601.465, Stats., should be included.

c. The title to ch. Ins 41 is not in proper format. A chapter title should be written in solid capital letters with no underscore. Also, there should be no underscoring under “ch. 41.” [See s. 1.05 (2) (a), Manual.]

d. The reference to “chs. 600 to 645 Wis. Stats.” in s. Ins 41.04 (1), should be replaced by “chs. 600 to 645, Stats.” Also, the reference to “s. 601.645, Wis. Stats.,” in s. Ins 41.01 (4) should be replaced by a reference to “s. 601.645, Stats.,”.

- e. In s. Ins 41.01 (3), the phrase “an health” should be replaced by the phrase “a health.”
- f. In s. Ins 41.01 (4), “such” should be deleted in the last line. The sentence should be amended to replace “such manner as the” by “the manner the.” [See s. 1.01 (9) (c), Manual.] This problem also occurs in s. Ins 41.05 (2).
- g. In s. Ins 41.05 (1), the notation “Ins” should be inserted before the reference to “41.01.”
- h. In s. Ins 41.05 (3), the phrase “this Act” should be replaced by an appropriate reference to “this section” or “this chapter.”
- i. In SECTION 1 of the rule, s. Ins 40.90, “OTHER REQUIREMENTS” should be numbered as s. Ins 41.90. Also, in this section, the phrase “s. 611.78 and ch. 617, Stats.” should be replaced by the phrase “s. 611.78, Stats., and ch. 617, Stats.”
- j. In SECTION 3, the subchapter titles for subchs. III and IV are not in proper format. Subchapter titles should be shown in capital letters without underscore. [See s. 1.05 (2) (a), Manual.]
- k. In s. Ins 41.05 (4), the paragraphs should end with periods rather than colons. [See the second paragraph of s. 1.03 (intro.), Manual.] Similar problems occur in s. Ins 41.10 (2) and (4).
- l. In s. Ins 50.75 (2), it appears that the word “shall” should precede the phrase “be in the form.”
- m. Section Ins 50.75 (2) and (3) (b) state that the opinion and memorandum (prepared by the qualified actuary) shall be in the form, and provide the information, required by the form specified by the commissioner. If a rule requires a new or revised form, a reference to the form should be included in a “note” to the rule. Also, a copy of the form should be attached to the rule or a statement should be included that describes where a copy of the form may be obtained at no charge. [See s. 1.09 (2), Manual and s. 227.14 (3), Stats.]
- n. In s. Ins 50.75 (3) (c), the phrase “such supporting memorandum as the commissioner requires” should be replaced by the phrase “supporting memorandum.”
- o. Section Ins 50.75 contains two subsections numbered as sub. (3). The subsections should be appropriately renumbered.
- p. Section Ins 50.75 (3) (b) provides that a required opinion must be based on standards adopted from time to time by the Actuarial Standards Board established by the American Academy of Actuaries and on such additional standards as the commissioner may prescribe. The first portion of this provision raises questions of improper delegation of authority to an outside body. If the standards of the American Academy of Actuaries are incorporated by reference into the rules of the Office of the Commissioner of Insurance, then the requirements of s. 227.21, Stats., should be met. In addition, the incorporated standards should be those standards as of a time certain; future amendments to the standards by the American Academy of Actuaries can be

incorporated into the rules in the future under appropriate rule-making procedures. Second, the Office of the Commissioner of Insurance should be careful that any additional standards prescribed by the commissioner are placed in the Administrative Code if those standards meet the definition of “rule” in s. 227.01 (13), Stats.

q. In s. 50.75 (4), the phrase “this rule” should be replaced by the phrase “this section.”

r. In s. Ins 50.75 (5) (a), it appears that the word “this” should be inserted before the word “section.”

s. In s. Ins 50.85 (2), it appears that the word “do” should be replaced by the word “conduct.”

t. In the rule, there are two sections numbered as SECTION 5. The renumbering of s. Ins 52.03 (1) (c) should be SECTION 6 and SECTIONS 6 to 9 of the rule should be renumbered as SECTIONS 7 to 10.

u. In general, ch. Ins 41 would be clearer if a definition section were included. This definition section should define terms such as “material transaction” and “material nonrenewal, cancellation or revision.” The use of definitions would reduce the need for lengthy and repetitive recitations of the types of transactions regulated by ch. Ins 41.